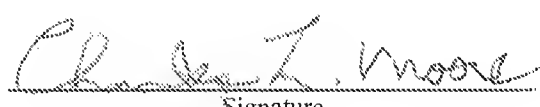


<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) 014682-000010
	Application Number  10/710,477	Filed  July 14, 2004
	First Named Inventor  James E. Aston et al.	
	Art Unit 2168	Examiner Mahesh H. Dwivedi
	<p>Applicant requests review of the final rejection in the above-identified application. An Amendment after Final Office Action is being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"><div style="width: 45%;"><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.7.1. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>33,742</u></p><p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p></div><div style="width: 50%; text-align: center;"> _____ Signature  Charles L. Moore _____ Typed or printed name  919-286-8000 _____ Telephone number  February 15, 2008 _____ Date</div></div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>	

☐ \*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed applicable form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

*If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: James E. Aston et al.	)	Confirmation # 4476
	)	
Application No. 10/710,477	)	Examiner: Mahesh H. Dwivedi
	)	
Filed: July 14, 2004	)	Group Art Unit: 2168
	)	
Title: METHOD AND SYSTEM TO	)	
PROTECT A FILE SYSTEM FROM	)	
VIRAL INFECTIONS	)	

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**REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Applicants submit that the current and preceding office actions issued by the Examiner in the present application contain clear errors in the Examiner's rejections as well as omissions of one or more essential elements needed for a *prima facie* rejection under 35 U.S.C. § 102 and/or 35 U.S.C. § 103.

The present invention is related to protecting a file system from a viral infection. A program running on a computer is flagged as being suspect for possibly containing a virus in response to the program performing at least one of a set of predetermined file system operations. The file system operations include: opening a local file on a local file system of the computer to perform a read operation and opening a shared file on a shared or network file system to perform a write or append operation with the local file; the program reading or opening itself and the program attempting to write or append any content to the shared file on the shared or network file system or to write or append any content to the local file on the local file system; the program attempting to write or append the local file to the shared or network file system and preserve a filename of the local file in the shared or network file system; and the program attempting to write or append a remote file to the local file system.

A filename and a location where the local or shared file is copied or written is stored in response to the local or shared file being copied or written by the program.

Claims 1-2, 5, 7-9, 12-19, 21-30, 32-38, and 40-44 were rejected under 35 U.S.C. § 102(b) as being unanticipated by *Halperin, et al.* (U.S. Pub. 2002/0194490). For the reasons discussed herein, applicant respectfully respects that *Halperin* fails to teach the essential elements needed for a prima facie rejection under 35 U.S.C. § 102. Claim 1 recites: “Flagging a program on a computer as being suspect for possibly containing a virus in response to at least one of: opening a local file on a local file system of the computer to perform a read operation and opening a shared file on a shared or network file system to perform a write or amend operation with the local file; the program reading or opening itself and the program attempting to write or append any content to the shared file on the shared or network file system or to write or append any content to the local file on the local file system; the program attempting to write or append the local file to the shared or network file system and preserve a file name of the local file in the shared or network file system; and the program attempting to write or append a remote file to the local file system . . .”

The Final Office Action dated as mailed November 16, 2007, cited the abstract of *Halperin* in rejecting the feature of flagging a program on a computer as being suspect for possibly containing a virus in response to at least one of the listed specific file system operations. The abstract of *Halperin* recites: “A method for malicious software detection including grouping a plurality of computing devices in a network into at least two groups, measuring a normal operation value of at least one operating parameter of any of the groups and detecting a change in value to indicate possible malicious software behavior within the network.”

Accordingly, *Halperin* does not teach or suggest flagging a program on a computer as being suspect for possibly containing a virus, nor does *Halperin* teach or suggest the specific conditions associated with the computer or file system operations as a condition for flagging the program on the computer as provided by Claim 1.

The Final Office Action also cited paragraphs [0097]-[0107] in rejecting the specific file system operations as recited above in Claim 1. As recited in the Office Action, paragraph [0097] beginning at line 6 and continuing through paragraph [0107], *Halperin* recites: “Note download the pertinent paragraphs from the Batten Publication from the U.S.

P.T.O. database. [Insert P.T.O. database]

Accordingly, *Halperin* teaches collecting information regarding target behavior detected at two or more computers 500 by the server 502. Then the server 502 correlates the presence of the target behavior to determine whether the correlated target behavior corresponds to a pre-defined suspicious behavior as an indication that a computer virus may have infected those computers. Applicant respectfully submits that there is not teaching or suggestion *Halperin* of flagging a program on an individual computer as being suspect for possibly containing a virus. Additionally, as indicated by the recitation from *Halperin* above, paragraphs [0098] – [0107] provide examples of expressions of suspicious behavior patterns. Applicant respectfully submits that none of the suspicious behavior patterns taught by *Halperin* teach or suggest the specific conditions or file system operations recited in Claim 1 for flagging the program on the individual computer.

Additionally, Claim 1 recites: “Storing a file name and a location where the local or shared file is copied or written in response to the local or shared file being copied or written by the program.” The Office Action cited paragraph [0108] of *Halperin* for rejecting this feature of Claim 1. Paragraph [0108] of *Halperin* recites: “(insert paragraph [0108]) from *Halperin* on the U.S.P.T.O. database)”

Accordingly, applicant respectfully submits that *Halperin* teaches away from the present invention in that *Halperin* quarantines the messages and does not allow them to reach their intended destinations. In contrast, the present invention, as recited in the embodiment of Claim 1, permits the file to be copied or written by the program at its intended location and then stores the file name and location where the local or shared file is copied or written. In contrast, *Halperin* teaches storing an entire message, not merely a name or identification of the message, in a buffer associated with the server. The message is not allowed to be sent to its intended destination. Accordingly, there is no need for *Halperin* to store a file name and a location where the file is copied or written, and *Halperin* does not teach or suggest such as provided by the embodiment of the present invention as recited in Claim 1.

For all of the reasons discussed above, the applicant respectfully submits that claim 1 is patentably distinguishable over *Halperin*, and reconsideration and withdrawal of the 35 U.S.C. § 102 Rejection of Claim 1 is respectfully requested.

Claims 2, 5, 7 and 8 depend directly from independent Claim 1. Because of this

dependency, Claims 2, 5, 7 and 8 contain all of the features of independent Claim 1. Therefore, these claims are also respectfully submitted to be patentably distinguishable over *Halperin*, in reconsideration and withdrawal of the § 102 rejection of these claims is respectfully solicited.

With respect to the rejection of independent Claim 9 under 35 U.S.C. § 102(b) as being anticipated by *Halperin*, Claim 9 recites: "Logging any predetermined file system operations associated with the program including recording a file name and location where a file is written in response to the file being written." The Office Action cited paragraph [0108] in rejecting this feature of Claim 9. As previously discussed, *Halperin* teaches in paragraph [0108] quarantining at a server messages believed to contain a virus. In contrast, the present invention as recited in Claim 9 permits the file to be written and then records the file name and the location where the file is written. As discussed above, *Halperin* does not teach or suggest this feature of the present invention. Therefore, Claim 9 is respectfully submitted to be patentably distinguishable over *Halperin*, in reconsideration and withdrawal of the 35 U.S.C. § 102 rejection of Claim 9 is respectfully requested.

With respect to the rejection of Claims 12-19 under 35 U.S.C. § 102(b) as being anticipated by *Halperin*, these claims recite additional features which further patentably distinguish over *Halperin*. For example, Claim 15 recites "Flagging a program in response to different file system operations similar to those recited in Independent Claim 1." As discussed with respect to Independent Claim 1, *Halperin* does not teach or suggest the specific file system operations recited in Dependent Claim 15.

Additionally, Claims 12-19 depend either directly or indirectly from Independent Claim 9, and by virtue of that dependency, contain all of the features of Independent Claim 9. Therefore, Claims 12-19 are also submitted to be patentably distinguishable over *Halperin*, and reconsideration and withdrawal of the Section 102 Rejection of Claims 12-19 is respectfully solicited.

Claims 3-4, 10-11, and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Halperin* as applied to Independent Claims 1 and 9 and in view of *Satterlee, et al.*, (U.S. Patent Pub. No. 2004/0025015). Claims 3 and 4 depend directly from Independent Claim 1 and Claims 10-11 and 20 depend either directly or indirectly from the Independent Claim 9. Because of these dependencies, these dependent claims include all of

the features of the referenced independent claims. Applicant respectfully submits that *Satterlee* does not teach or suggest the features of Independent Claims 1 and 9 as previously discussed which also distinguish Claims 1 and 9 over *Halperin*. Therefore, Claims 3-4, 10-12 and 20 are respectfully submitted to be patentably distinguishable over *Halperin* and *Satterlee*, and reconsideration and withdrawal of the 35 U.S.C. § 103 rejection of these claims is respectfully solicited.

As the Examiner's rejections have been shown to be in clear error and lack essential elements of a *prima facie* obviousness rejection, Applicants respectfully request that the claims of the present application be allowed to issue.

Respectfully submitted,

Date: FEB. 15, 2008

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